

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Joel Briggs,
Plaintiff

vs

Case No. 1:05-cv-44-HJW-TSH
(Weber, Sr. J.; Hogan, M. J.)

Village of Greenhills, Ohio,
Defendant

REPORT AND RECOMMENDATION

This matter is before the Court on pro se plaintiff Joel Briggs's motion for judgment on the pleadings (Doc 9). defendant's response (doc. 10), and plaintiff's reply. (Doc. 12).

Pro se plaintiff Joel Briggs initiated this action with the filing of a complaint on January 24, 2005, alleging claims for libel and slander against defendant the Village of Greenhills, Ohio, for defendant's apparent refusal to withdraw or expunge an underlying state court conviction for speeding within the Village which plaintiff disputes. (Doc. 1). Defendant filed its answer on March 3, 2005. (Doc. 6). Plaintiff now moves for judgment on the pleadings.

In determining a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), "all well-pleaded material allegations of the pleadings of the [non-movant] must be taken as true." *U.S. v. Moriarty*, 8 F.3d 329, 332 (6th Cir. 1993)(quoting *Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993). "The motion is granted when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law." *Paskvan v. City of Cleveland Civil Serv. Comm'n*, 946 F.2d 1233, 1235 (6th Cir. 1991).

Plaintiff argues that a document attached to his complaint as Exhibit A constitutes proof that he was not rightfully convicted of speeding in the Village of Greenhills, Ohio, and therefore the refusal of the Village to expunge his speeding conviction constitutes libel and or slander. As defendant points out, however, the document to which plaintiff refers is a Waiver and Release which plaintiff signed and which relates to waiver of his right to appeal and or seek a stay of execution of any sentence related to the underlying conviction. As such, the documents does not demonstrate that no material issue of fact exists making plaintiff entitled to judgment as a matter of law. See *Paskvan, supra*. Consequently, plaintiff's motion for judgment on the pleadings should be denied.

It is therefore RECOMMENDED that plaintiff's motion for judgment on the pleadings be DENIED.

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

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NOTICE

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on 4/18/2005. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.